

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA),
Indiranagar,
Bangalore- 560 038.

Dated: 9/11/87
719 /87 (F)

APPLICATION NO

W.P.No.

APPLICANT

Shri A. Francis Anthony

To

1. Shri A. Francis Anthony
312/A, Railway Quarters
M.G. Colony
Bangalore - 560 023

2. Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Bangalore - 560 050

3. The General Manager
Southern Railway
Park Town
Madras - 3

4. The Divisional Personnel Officer
Divisional Office
Personnel Branch
Southern Railway
Bangalore

Vs

RESPONDENTS

The GM, Southern Railway & 2 Ors

5. The Assistant Engineer(Building
Southern Railway
Bangalore
6. Shri M. Sreerangaiah
Railway Advocate
3, S.P. Buildings, 10th Cross
Cubbonpet Main Road
Bangalore - 560 002

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~copy~~/

~~copy~~ passed by this Tribunal in the above said application

on 4-11-87

Encl: as above.

RECEIVED *5 copies 10/11/87*
Diary No. *1000/10/87*

Issued Date: *10/11/87*
H. O. C. *10/11/87*
Section Officer
(JUDICIAL)

m. m. a. 10/11/87

for filling up the posts of Janitors, the applicant and several others with whom we are not concerned appeared for a written and viva-voce test conducted thereto by the Selection Authority, in which he was successful. In due course, the competent officer also approved the 'Select List'.

4. On the basis of the results and the vacancy position, the DPO by his order No.B/D.676/VII/SBC dated 3-7-1987 (Annexure-A2) promoted the applicant as Janitor on ad hoc basis. But notwithstanding the same, the applicant was not allowed to take charge of that post. Evidently after some correspondence, the DPO in his order No. B/P.676/VII/Janitor dated 1-8-1987 had informed the applicant that his promotion as a Janitor from 4-7-1987 had been withheld as a vigilance case was pending against him. Hence, this application.

5. In justification of the impugned order, the respondents have filed their reply and have also produced their records.

6. Sri M.Raghavendra Achar, learned counsel for the applicant contends that his client who was successful in the tests held for the post of a Janitor had been rightly appointed to the same and that it was not open to the DPO to withhold the promotion even if a vigilance case was pending against him.

7. Sri M.Sreerangaiah, learned counsel for the respondents sought to support the impugned order on the ground that the applicant had not been tested and was not successful in English language, one of the pre-requisites for the post of a Janitor and that his selection to that post was, therefore, invalid in law.

8. We have examined the proceedings of the selection committee for making selections to the posts of Janitors.



CENTRAL ADMINISTRATIVE TRIBUNAL:BANGALORE

DATED THIS THE 4TH DAY OF NOVEMBER,1987.

PRESENT:

Hon'ble Mr.Justice K.S.Puttaswamy, .. Vice-Chairman

And:

Hon'ble Mr.L.H.A.Rego, .. Member(A).

APPLICATION NUMBER 719 OF 1987.

A.Francis Anthony,
S/o Anthony,
Aged about 50 years,
residing at No.312/A,
Railway Quarters,
M.G.Colony, Bangalore-23. .. Applicant.

(By Sri M.Raghavendra Achar,Advocate)

v.

1. Southern Railway,
represented by its
General Manager,Madras.
2. Divisional Personnel Officer,
Divisional Office,
Personal Branch,Southern Railway,
Bangalore.
3. The Assistant Engineer (Buildings),
Southern Railway, Bangalore. .. Respondents.

(By Sri M.Sreerangaiah,Advocate)

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This application have come up for hearing this day, Vice-Chairman made the following:

O R D E R

In this application made under Section 19 of the Administrative Tribunals Act,1985 ('the Act'), the applicant has challenged Order No.B/P.676/VII/Janitor dated 11-8-1987 of the Divisional Personnel Officer, Bangalore ('DPO') (Annexure-A5).

2. Prior to 22-5-1987 the applicant was working as a Blacksmith High Skilled (Grade-I) in the Bangalore Division of the Southern Railway.
3. In response to the notification calling for applications for

(a) We quash order No.B/P.676/VII/Janitor dated 11-8-1987 (Annexure-A5) of the DPO.

(b) We direct the DPO - Respondent No.2 to give a posting to the applicant as a Janitor in pursuance of his order dated 3-7-1987 with all such expedition as is possible in the circumstances of the case and in any event not later than 15-11-1987. But, till such time the higher salary, if any, due to the applicant in pursuance of the order dated 3-7-1987 shall not be paid to him.

19.. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.

20. Let this order be communicated to all the parties forthwith.



Sd/-
VICE-CHAIRMAN

4/11/87

Sd/-
MEMBER(A)
4-11-87

- True copy -

SECTION 17
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

new ground stated by the respondents to sustain the impugned order of the DPO was correct and examine its correctness on that basis.

14. When a duly constituted selection committee had selected the applicant and the same had also been approved by the Divisional Railway Manager, it would not be proper for us to hold that he had not been properly selected on a reason that did not weigh with the selection committee itself. We cannot arrogate to ourselves the functions of the selection committee and hold that the applicant was not successful at all. On this short ground, we should decline to examine the new ground on which the claim of the applicant is sought to be defeated by the respondents.

15. Even otherwise, we are of the view, that the Rules, orders and the Board's Circulars as on the date the applicant was selected for the post of a Janitor, did not require that he should have been tested in English language. We find no merit whatsoever, in the new ground urged before us.

16. We have earlier noticed that the applicant had been promoted on ad hoc basis only, the validity of which is not challenged by the applicant. We cannot also go behind the order of promotion dated 3-7-1987 made by the DPO.

17. We have earlier noticed that the applicant was not allowed to perform the duties of the post of Janitor from 4-7-1987 and onwards. If that is so, we consider it proper to deny higher salary, if any, due to the applicant till he is given a posting for which we consider it proper to grant time to the respondents till 15-11-1987.

18. In the light of our above discussion, we make the following orders and directions:



9. We find that the selection committee on holding a written and viva-voce test and with due regard to the prescriptions then in force had declared the applicant as a successful candidate to the post of Janitor and the same had also been approved by the Divisional Railway Manager on 3-7-1987. On this basis only the DPO made his order on 3-7-1987 and promoted the applicant to the post of Janitor.

10. In his order dated 11-8-1987, the DPO had stated that the promotion of the applicant had been withheld on the ground that a vigilance case was pending against him. Sri Achar states that the vigilance case referred to by the DPO was the subject matter of a disciplinary proceeding against the applicant, which had ended in imposing a penalty of 'censure' against him. Sri Sreerangaiah does not rightly dispute the correctness of these submissions of Sri Achar which are also borne out by an order in that behalf made on 7-9-1987.

11. In their reply and also at the hearing, the respondents have not stuck to the ground on which the applicant's promotion was withheld by the DPO. If that is so, then the order made by the DPO on 11-8-1987 cannot be sustained at all. Even otherwise on the termination of the disciplinary proceedings the said ground totally disappears and is unavailable.

12. When an official is promoted to a higher post, on the basis of a selection, as in the present case, the fact that a 'vigilance case' was pending cannot be a ground to withhold the earlier promotion made in favour of the official. On this view also, the impugned order cannot be upheld.

13. We will assume for purposes of argument that the new